point in issue: Did petitioner reside in the Federation at the time of the commencement of the proceedings? As petitioner claims that he did, I think it may be pertinent, though not conclusive, to enquire whereabouts in the Federation? I can find no satisfactory answer to this question.

Construction of the word "reside" has given rise to much litigation and formed the subject of many reported decisions, some of which have been cited in this case. When this case first came before me on the 29th of January, 1957, it was apparent that the question of jurisdiction was a very live issue and this was confirmed on 29th May, 1958. The argument with which I have been favoured and the evidence of the petitioner has convinced me that petitioner at the time of the commencement of the proceedings resided not in the Federation but in Singapore. I think that the passage which I have cited above from *Macrae's*[3] *case* supports this view.

In my view when, in 1955, petitioner was transferred to Singapore petitioner intended to make his home there for an indefinite period. He is still there. I think the true position was disclosed in petitioner's original petition verified by his affidavit. By these two documents petitioner affirmed that he was residing on the 26th January, 1956 at 46, Bridport Avenue, Serangoon Garden Estate, Singapore. I think that that was true and that petitioner coming to realise that section 4(3)(b) of the Ordinance debarred him from relief, sought on that ground so to amend his petition as to bring himself within the jurisdiction. I think, however, that on the facts petitioner has failed to establish his residence in the Federation at the time of the commencement of the proceedings. Petitioner's case is analogous to that of a commercial traveller who has his home in one city and who, though he travels extensively and for lengthy periods on duty, still resides in that city.

Each case must depend on its own facts, and this maxim is particularly apt in cases turning on the construction of the word "reside."

In my view the decision of this point substantially disposes of the whole case and I dismiss the petition with costs to the respondent.

*Petition dismissed.*

Solicitors: *K. L. Devaser; Lovelace & Hastings.*

## PUBLIC PROSECUTOR v. M. K. MOHIDEEN & ONG LTD.

[A. Cr. J. (Good J.) August 28, 1958]

[Ipoh — Criminal Appeal No. 21 of 1958]

*Machinery Ordinance, 1953, s. 17(1) — Obligation of owners of mill to report accident — Distinction between servants and independent contractors.*

The respondents to this appeal were acquitted on a charge of failing to report a machinery accident which occurred in their oil mill. The ground on which they were acquitted was that the person disabled in the accident was not an employee or servant of the respondent but an independent contractor. The Public Prosecutor appealed against the decision.

**Held:** (1) the Magistrate was wrong in applying to the interpretation of a statutory provision the tests which distinguish servants from independent contractors for the purposes of the law of torts;

(2) there is an obligation on the owners of machinery, under section 17(1) of the Machinery Ordinance, 1953, to report an accident involving a person employed at work at the machinery, irrespective of whether such person is employed as a servant or an independent contractor.

MAGISTRATE'S APPEAL (CRIMINAL)

*Abdul Kadir bin Yusof* (Federal Counsel) for the appellant.

*K. Y. Khong* for the respondent.

*Cur. Adv. Vult.*

**Good J.:** — The respondents in this appeal are the owners of an oil mill. They were acquitted by the Ipoh Magistrate on a charge of failing to report a machinery accident which occurred at the mill in April last year. The ground on which they were acquitted was that the person disabled in the accident was not an employee or servant of the respondents but an independent contractor. The Public Prosecutor appealed against the acquittal.

I am of the opinion that there was an obligation on the owners of the machinery under section 17(1) of the Machinery Ordinance, 1953, to report this accident, and I think that the mistake which the learned Magistrate made in deciding the case as he did was to apply to the interpretation of a statutory provision the tests which distinguish servants from independent contractors for the purposes of the law of torts. The conditions precedent to the creation of a liability to report a machinery accident are:

(a) that the accident shall have caused the death or disablement of a person;

(b) that such person was employed at work; and

(c) that in the case of disablement he is by reason of the disablement prevented from earning full wages at the work at which he was employed for more than four days.

In my view the proper interpretation of this section requires it to be applied to a person working under the conditions under which P.W. 1 was proved to have been working. He entered into a contract with the respondents to work an oil milling machine in their oil mill at a rate of "50 cents per trip" (and it appears from the evidence of the Manager of the respondent firm that "trip" means one complete grinding. In these circumstances, it seems to me to be immaterial whether the Manager of the mill had complete control over the method of performance of the work or not since it is quite clear that P.W. 1 was a person employed at work in the mill, and whatever label may be attached to the 50 cents per grinding which was his rate of remuneration it seems to me to have been wages for the purposes of this section. He was, by reason of disablement due to the accident, deprived of the ability to earn his remuneration for more than four days and that was sufficient to place upon the owners of the machinery a duty to report the accident. The appeal is allowed and for the acquittal I substitute a conviction under section 17(1) of the Machinery Ordinance and proceed to pass sentence on them under section 35(1).

*Appeal allowed.*
*Conviction substituted for the acquittal.*

Solicitor: *Khong & Son.*

## DEPUTY PUBLIC PROSECUTOR v. TOH HAN UH

[A.Cr.J. (Buttrose J.) October 31, 1958]

[Singapore — Magistrate's Appeal No. 254 of 1958]

*Local Authority — Accidental damage to property of — Recovery of compensation, damages, etc. — Jurisdiction — Municipal Ordinance (Cap. 133 McElwaine Edn.), ss.259(10) and 371.*

The issue for determination in this appeal was as to the construction of subsection (10) of section 259 of the Municipal Ordinance which reads as follows: "Any person who carelessly or accidentally throws down or damages any pipe, line, pillar or lamp, whether within or without the Municipality, belonging to the Commissioners shall pay such sum of money by way of satisfaction to the Commissioners for the damage done, not exceeding five hundred dollars, as any Police Court thinks reasonable. Nothing in this sub-section shall prevent the Commissioners from taking any legal proceedings open to them at law before any Court having jurisdiction for the recovery of the full amount of the damages so caused by such person."

**Held:** the object of the subsection is to enable the City Council to recover a sum in compensation for the damage caused either accidentally or carelessly to its property specified in the subsection as a penalty in a summary way. The sum recoverable must be such as a Magistrate's Court thinks reasonable in relation to the damage actually caused, not exceeding five hundred dollars.

[**Editorial Note:** see now section 61 of the Local Government Ordinance, 1957 which deals with damage to local authority property.]

MAGISTRATE'S APPEAL.

*M. Karthigesu for the Crown.*

*G. Abisheganaden* (*amicus curiae*) for the respondent.

**Buttrose J.:** — This was an appeal by the Deputy Public Prosecutor from a decision of the City Magistrate's Court ordering the respondent to pay a nominal sum of $10 to the City Council by way of satisfaction for the damage done by the respondent to a street lighting pole.

The respondent was charged under subsection 10 of section 259 of the Municipal Ordinance as follows:

"That you, having accidentally damaged street lighting pole No. 28B Paya Lebar Road, Singapore, on 6 July, 1957 whilst driving car SF. 5987 you do pay by way of satisfaction such sum for the damage done as this Court may think reasonable under and by virtue of section 259(10) of the Municipal Ordinance."

At the trial the respondent who was represented by Counsel pleaded guilty.

The facts were that the respondent in attempting to avoid a collision with a trishaw drove his car off the road and damaged the street lighting pole. The cost of repairing the pole it was alleged was $232.22 but apart from a statement by prosecuting Counsel to this effect no evidence on this point was so far as the record goes before the Court.

Apart from the present summons no proceedings were taken against the respondent but the trishaw rider was proceeded against, presumably under the Road Traffic Ordinance, and compounded his offence by paying a sum of $5.

These facts were admitted by the respondent.

On the hearing of the appeal the respondent was not represented by Counsel although Mr.